

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LISA HUNTER, et al.,

Plaintiffs,

BILLIE JOHNSON, et al.,

Intervenor-Plaintiffs,

v.

Case No. 3:21-CV-512-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

CONGRESSMAN GLENN GROTHMAN,  
et al.,

Intervenor-Defendants,

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR  
COMMUNITIES, et al.,

Plaintiffs,

v.

Case No. 3:21-CV-512-jdp-ajs-ec

MARGE BOSTELMANN, et al.,

Defendants,

THE WISCONSIN LEGISLATURE,

Intervenor-Defendant,

LEAH DUDLEY, et al.,

Proposed Intervenors.

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**DEFENDANTS' ANSWER TO BLOC PLAINTIFFS'  
FIRST AMENDED COMPLAINT**

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Defendants Marge Bostelmann, Julie M. Glancey, Ann S. Jacobs, Dean Knudson, Robert F. Spindell, Jr., and Mark L. Thomsen, in their official capacities as members of the Wisconsin Elections Commission, and Meagan Wolfe, in her official capacity as the Administrator of the Wisconsin Elections Commission (collectively, the “Defendants”), answering the First Amended Complaint for Declaratory and Injunctive Relief filed in the above consolidated matters by plaintiffs Black Leaders Organizing for Communities, Voces de la Frontera, the League of Women Voters of Wisconsin, Cindy Fallona, Lauren Stephenson, Rebecca Alwin, Helen Harris, Woodrow Wilson Cain, II, Nina Cain, Tracie Y. Horton, Pastor Sean Tatum, Melody McCurtis, Barbara Toles, and Edward Wade, Jr. (collectively, the “BLOC Plaintiffs), hereby ADMIT, DENY, and ALLEGE as follows:

## INTRODUCTION

Defendants respond as follows to the allegations in the Introduction section of the BLOC Plaintiffs' First Amended Complaint:

ADMIT that the BLOC Plaintiffs challenge Wisconsin's current legislative districts as unconstitutionally malapportioned, and that they challenge the Milwaukee-area State Assembly districts as violating Section 2 of the Voting Rights Act. Further ADMIT that they seek the relief referenced in the introductory section.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin's current districts must be reapportioned prior to any future state legislative election. *See Wis. Const., art. IV, § 3; U.S. Const. amend. XIV, § 2.* Further ALLEGE as follows:

- The next general election for congressional and state legislative seats in Wisconsin is scheduled for November 8, 2022;
- The partisan primary for that election is scheduled for August 9, 2022;
- The period for candidates to circulate nominating petitions for the November 8, 2022, election will begin on April 15, 2022;
- In order for staff of the Wisconsin Elections Commission to be able to timely and effectively administer the November 8, 2022, election—including the nominating petition circulation process starting on April 15, 2022—a new congressional and state legislative district plan needs to be in place no later than March 1, 2022.

- Any new legislative district plan must comply with all applicable state and federal laws, including any applicable provisions of the Voting Rights Act.

LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the introductory section, and thus DENY.

ALLEGE that all documents referenced in the introductory section—including census data, statutes, constitutional provisions, court opinions, and any other sources of law—speak for themselves, and DENY any characterization of them contrary to their express terms.

In all other respects, ALLEGE that the introductory section contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

## **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1357, and 2284 to hear the claims for legal and equitable relief arising under the federal constitution and the Voting Rights Act. It also has general jurisdiction under

28 U.S.C. §§ 2201 and 2202, the Declaratory Judgments Act, to grant the declaratory relief requested by Plaintiffs.

ALLEGE that the paragraph contains only legal conclusions to which no responsive pleading is required. Further ALLEGE that the statutes referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

2. This action challenges the constitutionality of the apportionment of Wisconsin's legislative districts, found in Chapter 4 of the Wisconsin Statutes and revised as ordered by the U.S. District Court for the Eastern District of Wisconsin in *Baldus v. Members of the Wisconsin Government Accountability Board*, 849 F. Supp. 2d 840 (E.D. Wis. 2012) (per curiam) (three-judge panel). The current state legislative district boundaries were based on the 2010 census of the state's population, now superseded by the 2020 census. This action likewise challenges the Milwaukee-area State Assembly districts as violating Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, by diluting Black voters' ability to elect the candidates of their choice through packing and cracking of Black voters across districts.

ADMIT that BLOC Plaintiffs challenge Wisconsin's current state legislative districts as unconstitutionally malapportioned, and that they challenge the Milwaukee-area State Assembly districts as violating Section 2 of the Voting Rights Act. ADMIT that the current state legislative district boundaries were based on the 2010 census of the state's population, that some districts were revised by court order, and that the 2010 census data has now been superseded by the 2020 census.

3. 28 U.S.C. § 2284(a) requires that a district court of three judges hear redistricting cases. In 1982, 1992, and 2002, three-

judge panels convened pursuant to 28 U.S.C. § 2284 resolved complaints like this one, developing redistricting plans for the state legislature in the absence of valid plans adopted by the Legislature and enacted with the Governor's approval. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart v. Wendelberger*, 2002 WL 3412747, *amended by* 2002 WL 34127473.

ADMIT the allegations in the first sentence of this paragraph and ALLEGE that, on August 18, 2021, the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit assigned two additional judges to this case, pursuant to 28 U.S.C. § 2284(a) and (b)(1). Further ADMIT that federal courts have developed legislative redistricting plans for Wisconsin in the past. ALLEGE that the court decisions referenced in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

4. This Court has personal jurisdiction over all Defendants. Defendants Spindell, Thomsen, Knudson, Glancey, Jacobs, Bostelmann, and Wolfe are state officials who reside in Wisconsin and perform official duties in Madison, Wisconsin.

ADMIT that Defendants are sued in their official capacities and reside within the State of Wisconsin. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (e). At least two of the defendants resides in the Western District of Wisconsin, and Defendants are state officials performing official duties in Madison, Wisconsin. Members of two Plaintiff organizations reside and vote in this district, and two Individual

Plaintiffs, Stephenson and Alwin, also reside and vote in this district.

ADMIT that the Defendants are state officials performing official duties in Madison, Wisconsin. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

## **PARTIES**

### ***Plaintiffs***

6. Plaintiffs include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts, including in now-overpopulated districts (the “Organizational Plaintiffs”).

ADMIT that BLOC Plaintiffs include three nonprofit groups, each with members or constituents who are citizens, residents, and qualified voters of the United States of America and the State of Wisconsin, residing in various counties and legislative districts. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations in the paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

7. Plaintiff Black Leaders Organizing for Communities (“BLOC”) is a nonprofit project established in 2017 to ensure a high

quality of life and access to opportunities for members of the Black community in Milwaukee and throughout Wisconsin. BLOC is a year-round civic engagement organization that has a robust field program to get out the vote and do civic education work door-to-door with community members and through its fellowship program. During 2018 BLOC made 227,000 door attempts in Milwaukee, targeting Black residents to exercise their right to engage in civic participation including voting. BLOC trains its constituents on the civics process and on different ways to make their voices heard, including (but not limited to) voting in each election. BLOC is regarded and used by members of the African-American community in Milwaukee as a resource and conduit through which they can become more engaged in and advocate for rights and political representation for members of their community.

ADMIT the allegations in the first sentence of the paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

8. Plaintiff Voces de la Frontera (“Voces”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 515 S. 5th St., in the City of Milwaukee, Milwaukee County, Wisconsin. Voces, a community-based organization currently with over one thousand dues-paying members, was formed in 2001 to advocate on behalf of the rights of immigrant and low-income workers. Voces currently has chapters in Milwaukee, Racine, Waukesha, Sheboygan, Walworth County, Madison, West Bend, Manitowoc, and Green Bay. Voces is dedicated to educating and organizing its membership and community members to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. Voces has sought legal redress in multiple cases to protect the voting rights of Wisconsin’s Latino voters, including challenging discriminatory legislative districts (as recently as in *Baldus* in 2011) and voter registration and photo ID requirements. Voces seeks to maximize eligible-voter participation through its

voter-registration efforts and encourage civic engagement through registration and voting.

ADMIT the allegations in the first sentence of the paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

9. Plaintiff League of Women Voters of Wisconsin (“LWVWI”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI is an affiliate of The League of Women Voters of the United States, which has 750 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites. LWVWI, a nonpartisan community-based organization, was formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women’s suffrage. LWVWI is dedicated to encouraging its members and the people of Wisconsin to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWVWI is to promote political responsibility through informed and active participation in government and to act on select governmental issues. LWVWI seeks to maximize eligible-voter participation through its voter-registration efforts and encourage civic engagement through registration and voting. LWVWI works with and through 20 local Leagues in the following cities, counties, and areas throughout Wisconsin: Appleton, Ashland/Bayfield Counties, Beloit, Dane County, Door County, the Greater Chippewa Valley, Greater Green Bay, Janesville, the La Crosse area, Manitowoc County, Milwaukee County, the Northwoods, Ozaukee County, the Ripon area, Sheboygan County, the Stevens Point area, the St. Croix Valley, the Whitewater area, Winnebago County, and the Wisconsin Rapids area. These local Leagues have approximately 2,800 members, all of whom are also members of LWVWI. LWVWI has prosecuted lawsuits in state and federal courts in Wisconsin to vindicate the voting and representational rights of Wisconsin voters; this includes actions in this Court, such

as *Swenson v. Bostelmann*, 20-cv-459-wmc (W.D. Wis. 2020), and *Lewis v. Knudson*, 20-cv-284 (W.D. Wis. 2020).

ADMIT the allegations in the first three sentences of the paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

10. Organizational Plaintiffs' members and constituents include voters who reside in various State Senate and Assembly districts across Wisconsin, including districts that are now overpopulated. Because they live in state legislative districts that were approximately equal in population with the other state legislative districts at the time the current districts were configured in 2011, but that are now overpopulated as a result of the state population count released by the Census Bureau on April 26, 2021, their votes are now diluted compared with voters in districts that are now underpopulated. This vote dilution constitutes a specific and personal injury to each voter in an overpopulated district that can be addressed by a federal court. See *Reynolds*, 377 U.S. at 561; *Baker*, 369 U. S. at 206.

ADMIT that Organizational Plaintiffs' members and constituents include voters who reside in various State Senate and Assembly districts in Wisconsin.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. See Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

Further ALLEGE that the population data and court decision referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

11. Plaintiffs also include individual voters (“Individual Plaintiffs”) who reside either in now-overpopulated districts or in districts that violate Section 2 of the Voting Rights Act. The residency of Individual Plaintiffs in three overpopulated districts is summarized here: [tabular data omitted]

ADMIT that the BLOC Plaintiffs include individual voters who reside in the legislative districts identified in this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to

the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

12. Individual Plaintiff Cindy Fallona resides in Wisconsin Assembly district 5 and State Senate district 2. Fallona has lived at this residence for over three decades and is a regular voter in Wisconsin elections. Fallona intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

ADMIT.

13. Individual Plaintiff Lauren Stephenson resides in Wisconsin Assembly district 76 and State Senate district 26. Stephenson has lived at this residence for over six years and is a regular voter in Wisconsin elections. Stephenson intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

ADMIT.

14. Individual Plaintiff Rebecca Alwin resides in Wisconsin Assembly district 79 and State Senate district 27. Alwin has lived at this residence for over 25 years and is a regular voter in Wisconsin elections. Alwin intends to vote in 2022 and is registered at this residence, with no plans to register at a different address.

ADMIT.

15. Individual Plaintiffs also include Black voters whose votes are diluted in violation of Section 2 of the Voting Rights Act by placing them in Milwaukee-area Assembly districts that are either packed with excessively high numbers of Black voters—well above what is necessary to afford them an equal opportunity to elect their

preferred candidates—or cracked from districts containing other Black voters, where their voting power is instead overwhelmed by a white bloc voting in opposition to their candidates of choice.

ADMIT that the BLOC Plaintiffs include individual Black voters who reside in Milwaukee-area Assembly districts. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

16. Plaintiff Helen Harris is an African-American citizen of the United States and of the State of Wisconsin. She is a resident and registered voter in Milwaukee County in Assembly District 22. Ms. Harris has been unable to elect candidates of her choice to the Wisconsin State Assembly despite strong electoral support for those candidates from other African-American voters in her community. An additional BVAP majority district could be drawn including the Milwaukee County portion of Assembly district 22, including Ms. Harris's residence, to provide a remedy for the existing Section 2 violation. The apportionment of six majority-minority districts to the sufficiently numerous and geographically

compact Black voting age population in the Milwaukee region, as opposed to the seven such districts required by the Voting Rights Act, dilutes Ms. Harris's voting power and affords her less opportunity than other members of the electorate to participate in the political process and to elect a representative of her choice to the Wisconsin State Assembly.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

17. Plaintiff Woodrow Wilson Cain, II, is an African-American citizen of the United States and of the State of Wisconsin. He is a resident and registered voter in the Village of Brown Deer, in Milwaukee County, in Assembly District 24. Mr. Cain has been unable to elect candidates of his choice to the Wisconsin State Assembly despite strong electoral support for those candidates from other African-American voters in his community. An additional BVAP majority district could be drawn including the Village of Brown Deer, including Mr. Cain's residence, to provide a remedy for the existing Section 2 violation. The apportionment

of six majority-minority districts to the sufficiently numerous and geographically compact Black voting age population in the Milwaukee region, as opposed to the seven such districts required by the Voting Rights Act, dilutes Mr. Cain's voting power and affords him less opportunity than other members of the electorate to participate in the political process and to elect a representative of his choice to the Wisconsin State Assembly.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

18. Plaintiff Nina Cain is an African-American citizen of the United States and of the State of Wisconsin. She is a resident and registered voter in the Village of Brown Deer, in Milwaukee County, in Assembly District 24. Ms. Cain has been unable to elect candidates of her choice to the Wisconsin State Assembly despite strong electoral support for those candidates from other African-American voters in her community. An additional BVAP majority district could be drawn including the Village of Brown Deer, including Ms. Cain's residence, to provide a remedy for the existing

Section 2 violation. The apportionment of six majority-minority districts to the sufficiently numerous and geographically compact Black voting age population in the Milwaukee region, as opposed to the seven such districts required by the Voting Rights Act, dilutes Ms. Cain's voting power and affords her less opportunity than other members of the electorate to participate in the political process and to elect a representative of her choice to the Wisconsin State Assembly.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

19. Plaintiff Tracie Y. Horton is an African-American citizen of the United States and of the State of Wisconsin. She is a resident and registered voter in the Village of Brown Deer, in Milwaukee County, in Assembly District 24. Ms. Horton has been unable to elect candidates of her choice to the Wisconsin State Assembly despite strong electoral support for those candidates from other African-American voters in her community. An additional BVAP majority district could be drawn including the Village of Brown

Deer, including Ms. Horton's residence, to provide a remedy for the existing Section 2 violation. The apportionment of six majority-minority districts to the sufficiently numerous and geographically compact Black voting age population in the Milwaukee region, as opposed to the seven such districts required by the Voting Rights Act, dilutes Ms. Horton's voting power and affords her less opportunity than other members of the electorate to participate in the political process and to elect a representative of her choice to the Wisconsin State Assembly.

ADMIT the allegations in the first two sentences of this paragraph.

LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

20. Plaintiff Pastor Sean Tatum is an African-American citizen of the United States and of the State of Wisconsin. He is a resident and registered voter in the Village of Brown Deer, in Milwaukee County, in Assembly District 24. Pastor Tatum has been unable to elect candidates of his choice to the Wisconsin State Assembly despite strong electoral support for those candidates from other African-American voters in his community. An additional BVAP

majority district could be drawn including the Village of Brown Deer, including Pastor Tatum's residence, to provide a remedy for the existing Section 2 violation. The apportionment of six majority-minority districts to the sufficiently numerous and geographically compact Black voting age population in the Milwaukee region, as opposed to the seven such districts required by the Voting Rights Act, dilutes Pastor Tatum's voting power and affords him less opportunity than other members of the electorate to participate in the political process and to elect a representative of his choice to the Wisconsin State Assembly.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

21. Plaintiff Melody McCurtis is an African-American citizen of the United States and the State of Wisconsin. She is a resident and registered voter in the City of Milwaukee, in Assembly District 18. Ms. McCurtis is denied an equal opportunity to vote for candidates for the Wisconsin State Assembly because she is packed in District 18, where her vote is of lesser value because African Americans are concentrated there. The apportionment of six BVAP majority districts to the sufficiently numerous and geographically compact Black population in the Milwaukee area, as opposed to seven BVAP majority districts required by the Voting Rights Act, dilutes Ms. McCurtis's voting power.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

22. Plaintiff Barbara Toles is an adult African-American citizen of the United States and the State of Wisconsin. She is a resident and registered voter in the City of Milwaukee, in Assembly District 17. Ms. Toles is denied an equal opportunity to vote for candidates for the Wisconsin State Assembly because she is packed in District

17, where her vote is of lesser value because African Americans are concentrated there. The apportionment of six BVAP majority districts to the sufficiently numerous and geographically compact Black population in the Milwaukee area, as opposed to seven BVAP majority districts required by the Voting Rights Act, dilutes Ms. Toles's voting power.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

23. Plaintiff Edward Wade, Jr., is a 51-year-old African-American citizen of the United States and the State of Wisconsin. He is a resident and registered voter in the City of Milwaukee, in Assembly District 12. Mr. Wade is denied an equal opportunity to vote for candidates for the Wisconsin State Assembly because he is packed in District 12, where his vote is of lesser value because African Americans are concentrated there. The apportionment of six BVAP majority districts to the sufficiently numerous and geographically compact Black population in the Milwaukee area,

as opposed to seven BVAP majority districts required by the Voting Rights Act, dilutes Mr. Wade's voting power.

ADMIT the allegations in the first two sentences of this paragraph. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY. ALLEGE that the Voting Rights Act speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

### ***Defendants***

24. Defendants Robert F. Spindell, Jr., Mark L. Thomsen, Dean Knudson, Julie M. Glancey, Ann S. Jacobs, and Marge Bostelmann are sued in their official capacities as the members of the Wisconsin Elections Commission ("WEC").

ADMIT.

25. Defendant Meagan Wolfe is sued in her official capacity as the Administrator of the WEC.

ADMIT.

26. The WEC has the responsibility for the administration and enforcement of Wisconsin laws “relating to elections” including Chapters 5 to 10 and 12. Wis. Stat. § 5.05(1). This includes the election every two years of Wisconsin’s representatives in the State Assembly and every four years its representatives in the State Senate. The WEC provides support to local clerks in each of Wisconsin’s 72 counties, in administering and preparing for the election of members of the Wisconsin Legislature.

ADMIT.

27. Defendant Wolfe, as commission administrator, is the chief election officer of the state. Wis. Stat. § 5.05(3g).

ADMIT.

### **FACTS AND CONSTITUTIONAL PROVISIONS RELATED TO MALAPPORTIONMENT**

28. The U.S. Constitution requires that the members of the Wisconsin Legislature be elected on the basis of equal representation. *Arrington*, 173 F. Supp. 2d at 860 (citing U.S. Const. art. I, § 2). The State Senate and Assembly districts must therefore be reapportioned after each Federal Census to be substantially equal in population.

ADMIT that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of population data obtained in each decennial U.S. census and that Wisconsin’s current districts must be reapportioned prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV, § 2. ALLEGE that the court

decision referenced in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

29. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.”

ADMIT that the referenced constitutional provision includes the quoted language.

30. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state the right to vote in state elections, and that each citizen shall have substantially equal legislative representation regardless of what

part of the state they live in, giving each person's vote equal power. *Reynolds*, 377 U.S. 533, 561-68 (1964).

ADMIT that the referenced constitutional provision includes the quoted language. ALLEGE that the referenced constitutional provision and court decision speak for themselves, and DENY any characterization of them contrary to their express terms.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

31. 2011 Wisconsin Act 43 divided the official state population determined by the 2010 Census into 33 Senate districts and 99 Assembly districts with relatively equal populations. The revisions ordered by the court *Baldus* in 2012 did not disturb this approximate equality, despite modifying two Assembly districts. In 2012, each Senate district contained a population of approximately 172,333 residents, and each Assembly district contained a population of approximately 57,444. A copy of Chapter 4 of the Wisconsin Statutes, embodying 2011 Wisconsin Act 43, is attached as Exhibit 5.

ADMIT the factual allegations in the first sentence of this paragraph. ALLEGE that the census data, statutory provisions, and court decision

referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

32. The 2012 state legislative elections, and every subsequent biennial legislative election, including the November 6, 2020 election, have been conducted under the district boundaries created by Act 43, as modified by *Baldus*. The next regular state legislative primary election is scheduled for August 9, 2022, and the next regular state legislative general election is scheduled for November 8, 2022. [footnote omitted]

ADMIT.

33. The Bureau of the Census, U.S. Department of Commerce, conducted a decennial census of Wisconsin and of all the other states in 2020 under Article I, Section 2, of the U.S. Constitution.

ADMIT.

34. Under 2 U.S.C. §§ 2a and 2c and 13 U.S.C. § 141(c), the Census Bureau on April 26, 2021 announced and certified the actual enumeration of the population of Wisconsin at 5,893,718 as of April 1, 2020, a population increase of approximately 200,000 people from the 2010 census. A copy of the Census Bureau's Apportionment Population and Number of Representatives, by state, is attached as Exhibit 6.

ADMIT that 2020 census results that included the population of Wisconsin were announced on April 26, 2021. Otherwise ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

35. Based on the 2020 Census, the precise ideal population for each Senate district in Wisconsin is 178,598 and for each Assembly district 59,533 (each an increase compared to the same figures from 2010).

ALLEGE that the 2020 census results speak for themselves, and DENY any characterization of them contrary to their express terms.

36. The 2020 Census's P.L. 94-171 data, released August 12, 2021, demonstrate that Wisconsin's population has not grown uniformly across all 33 Senate and 99 Assembly districts. The data reveal substantial population disparities, indicating which districts are now over- and underpopulated in reference to the 2020 Census's "ideal" district populations for Wisconsin's Senate and Assembly districts.

ADMIT that, on August 12, 2021, U.S. census data was delivered to Wisconsin officials and that Wisconsin's population and its distribution have changed since the 2010 census. ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

37. Because of population shifts over the past decade, the 2011 state legislative districts now give some Wisconsinites' votes more weight than others. Voters living in Assembly district 76—where the population is 20.41% greater than the ideal population based on the 2020 Census—have their votes diluted. This is particularly true compared to voters in other districts like Assembly district 10—now 11.60% less populated than the ideal district population. Voters in the 37 other overpopulated districts suffer similar harm: Assembly districts 79, 5, 78, and 80 have grown overpopulated in the past decade (with populations now 17.13%, 13.26%, 12.78%, and 10.58% over the ideal district population, respectively). Other districts are now underpopulated, giving voters who reside there an outsized voice in electing their state representative. Assembly districts 18, 16, and 8, for example, now have populations 11.00%, 9.73%, and 9.30% below the ideal population of 59,533, respectively, based on the 2020 Census.

ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of

the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

38. The same population growth imbalances affect Senate districts, with some voters suffering vote dilution and others benefitting from heightened voting efficiency. Senate district 26 has grown to exceed the current ideal district population of 178,598 by 13.00%; Senate district 27 by 9.47%; and Senate district 16 by 7.78%. Meanwhile Senate district 6 is now underpopulated by 9.25% relative to the ideal Senate district size and Senate districts 4, 3, and 22 are 8.62%, 4.43%, and 4.19% below the ideal size.

ALLEGE that the census data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. Further ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.*

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

39. This facial malapportionment of state legislative districts dilutes the voting strength of Individual Plaintiffs residing in the

overpopulated districts: the weight or value of each voter in a relatively overpopulated district is, by definition, less than that of any voter residing in a relatively underpopulated district.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

40. Article IV, section 3, of the Wisconsin Constitution assigns the Legislature and Governor responsibility for enacting a constitutionally valid plan for the state's legislative districts.

ADMIT.

41. In each of the previous four decades, when control over Wisconsin's government has been divided between members of the Republican and Democratic Parties, however, the Legislature and Governor have not met that responsibility. Instead, a federal court has established district boundaries to ensure the constitutional guarantees for citizens and voters.

ADMIT that the Legislature and Governor have not enacted a legislative district plan in every decennial cycle, and that federal courts have been involved in the redistricting process in some previous decades. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

42. In the most recent round of decennial redistricting in 2011, the Legislature and Governor did enact a legislative district plan, but that plan, too, required judicial intervention to give Wisconsin a legally compliant legislative district map.

ADMIT that the Legislature and Governor enacted a legislative district plan in 2011, and that some districts were revised by court order. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

43. The legislature elected in November 2020 convened for the first time on January 4, 2021. Both the Senate and Assembly are controlled by Republican majorities, while the Governor is a Democrat. Each time in the past four decades that Wisconsin has had divided partisan control when redistricting was required, the political branches have failed to reach a compromise, requiring a federal court to step in and assume the constitutionally mandated reapportionment of state legislative districts. *See Prosser*, 793 F. Supp. 859; *AFL-CIO*, 543 F. Supp. 630; *Baumgart*, 2002 WL 34127471, amended by 2002 WL 34127473. The low likelihood of an enacted redistricting plan in the current cycle is evidenced by the Legislature's recent preference for litigation over legislation, as described in detail above.

ADMIT the allegations in the first two sentences of this paragraph. Further ADMIT that the Legislature and Governor have not enacted a

legislative district plan in every decennial cycle, and that federal courts have been involved in the redistricting process in some previous decades. ALLEGE that the court decisions referred to in the paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

Further ALLEGE that a new congressional and state legislative district plan needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin's next scheduled congressional and state legislative election. Additionally ALLEGE that, in light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.

44. The deadline for new districts to be in place is driven by the 2022 elections for state legislative seats. The date of the primary for these elections is dictated by state statute, and in 2022 will be August 9. Because there are a number of steps leading up to an election, however, new districts must be set no later than March 15, 2022. This is the statutory deadline for the WEC to notify county clerks of which offices will be voted on, and where

information about district boundaries can be found. This notice informs potential candidates of district boundaries, so they can begin circulating nomination papers for signature by voters within those districts on April 15, 2022. Wis. Stat. § 8.15(1). The statutory deadline for completed nomination papers to be submitted to the WEC is June 1, 2022. *Id.* The WEC must then certify which candidates have qualified for ballot access, followed by ballot design, testing, printing, and then distribution of absentee ballots, which must begin no later than 47 days election day. *See* Wis. Stat. § 7.15. Thus, while the primary election occurs in August, new districts must be in place several months before that date for the WEC to comply with state law, and so that candidates may appear on the ballot for the election on that date.

ADMIT that the partisan primary for the next state legislative election in Wisconsin is scheduled for August 9, 2022, and that, on or before March 15, 2022, the Wisconsin Elections Commission must send to each county clerk a Notice of Election that includes territorial information about any recent redistricting. *See* Wis. Stat. § 10.06(1)(f) (requiring a type A notice) and § 10.01(2)(a) (prescribing the content of a type A notice). Further ALLEGE that, independent of the March 15, 2022, notice deadline, a new legislative district plan needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer the partisan primary on August 9, 2022.

## **LEGAL BACKGROUND RELATED TO VOTING RIGHTS ACT SECTION 2 CLAIM**

45. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . .” A violation of Section

2 is established if it is shown that “the political processes leading to [a] nomination or election” in the jurisdiction “are not equally open to participation by [minority voters] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

ALLEGE that the statutory provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

46. The dilution of Black voting strength “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

ALLEGE that the court decision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

47. In *Gingles*, the Supreme Court identified three necessary preconditions (“the *Gingles* preconditions”) for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group must be “politically cohesive”; and (3) the majority must vote “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” 478 U.S. at 50-51.

ALLEGE that the statutory provision and court decision referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

48. After the preconditions are established, the statute directs courts to assess whether, under the totality of the circumstances, members of the racial group have less opportunity than other

members of the electoral to participate in the political process and to elect representatives of their choice. 52 U.S.C. § 10301(b). The Court has directed that the Senate Report on the 1982 amendments to the Voting Rights Act be consulted for its non-exhaustive factors that the court should consider in determining if, in the totality of the circumstances in the jurisdiction, the operation of the electoral device being challenged results in a violation of Section 2.

ALLEGE that the statutory provision and Senate Report referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other factual allegations or characterizations in the paragraph, and thus DENY.

49. The Senate Factors include: (1) the history of official voting-related discrimination in the state or political subdivision; (2) the extent of which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group; (4) the exclusion of members of the minority group from candidate slating processes; (5) the extent to which the minority group bears the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; and (7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

ALLEGE that the Senate Report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

50. Nevertheless, “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *United States v. Marengo Cty. Comm’n*, 731 F.2d

1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); see also *id.* (“The statute explicitly calls for a ‘totality-of-the-circumstances’ approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.”).

ALLEGE that the court decision and Senate Report referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms.

### **FACTUAL BACKGROUND RELATED TO SECTION 2 CLAIM**

51. Wisconsin Act 43 created six Assembly districts that have a majority Black voting age population in the Milwaukee area. Those districts are heavily Black and pack the vast majority of Milwaukee’s Black population in them, while at the same time leaving other Black voters, including those in Milwaukee wards 33 and 34, and the Village of Brown Deer, cracked in districts featuring white bloc voting against minority preferred candidates.

LACK knowledge or information sufficient to form a belief as to the truth of the factual allegations and characterizations in this paragraph, and thus DENY.

52. District 10 has a BVAP of 59.4%, and has been represented by Democratic state representative David Bowen, a Black man, since 2015. Rep. Bowen has run unopposed for his seat in every election since he won the 2014 primary for the district.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

53. District 11 has a BVAP of 65.5% and has been represented by Democratic state representative Dora Drake, a Black woman,

since 2021. Rep. Drake defeated her Republican opponent by a margin of 84.6% to 15.2% in the 2020 general election. From 2017 to 2021, District 11 was represented by Democratic state representative Jason Fields, a Black man, who ran unopposed in both the 2016 and 2018 general elections. From 2013 to 2017, District 11 was represented by Democratic state representative Mandela Barnes, a Black man, who ran unopposed in the both the 2012 and 2014 general elections.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

54. District 12 has a BVAP of 60.6% and has been represented by Democratic state representative LaKeshia Myers, a Black woman, since 2019. Rep. Myers defeated her Republican opponent by a margin of 81.7% to 18.1% in the 2020 general election, and ran unopposed in the 2018 general election. In the 2018 Democratic primary election, Rep. Myers defeated then-incumbent Democratic Rep. Fred Kessler, a white man, by a margin of 59.3% to 40.7%. Rep. Kessler ran unopposed in the 2012, 2014, and 2016 general elections.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

55. District 16 has a BVAP of 55.6% and has been represented by Democratic state representative Kalan Haywood, a Black man, since 2019. In the 2020 general election, Rep. Haywood faced no major party opponent, defeating an independent candidate by a margin of 88.9% to 10.8%. Rep. Haywood was unopposed in the 2018 general election. Prior Democratic state representative Leon Young, a Black man, ran unopposed in the 2012, 2014, and 2016 general elections.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

56. District 17 has a BVAP of 68.4% and has been represented by Democratic state representative Supreme Moore Omokunde, a Black man, since 2021. Rep. Omokunde defeated his Republican opponent by a margin of 85.9% to 13.9% in the 2020 general election. From 2017 to 2021, District 17 was represented by Democratic state representative David Crowley, a Black man, who ran unopposed in the 2018 and 2016 general elections. Prior Democratic state representative LaTonya Johnson, a Black woman, defeated her independent challengers by a margin of 87.5% to 12.5% in the 2014 general election and 84.7% to 14.9% in the 2012 general election.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

57. District 18 has a BVAP of 60.7% and has been represented by Democratic state representative Evan Goyke, a white man, since 2013. Rep. Goyke ran unopposed in the 2014, 2016, 2018, and 2020 general elections. Rep. Goyke defeated his Libertarian Party challenger in the 2012 general election by a margin of 87.9% to 11.6%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

58. Wisconsin Act 43 “packs” Black voters in Districts 10, 11, 12, 16, 17, and 18, where they constitute an excessive majority, and “cracks” Black voters in other parts of the Milwaukee area, such as Milwaukee City wards 33 and 34, and the Village of Brown Deer, dispersing them in Districts 22 and 24—centered in heavily white suburban areas of Ozaukee, Washington, and Waukesha Counties—where white bloc voting prevents Black voters from having an equal opportunity to elect their candidates of choice.

LACK knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which

no responsive pleading is required.

59. District 22 has a white voting-age population (“WVAP”) of 84.3% and a BVAP of 7.0%, and stretches from the Town of Erin and the Village of Richfield in Washington County, south to the Town of Lisbon, and the Villages of Menomonee Falls, Lannon, and Butler in Waukesha County, and into the City of Milwaukee, where it picks up two wards—Milwaukee City wards 33 and 34. The Waukesha County and Washington County portions of the district are heavily white and vote heavily Republican. The Milwaukee County portion of District 22 has a BVAP of 43.3% (35.7% in ward 33 and 52.8% in ward 34), and votes heavily Democratic. The Milwaukee County portion of District 22 borders District 12, one of the BVAP majority districts.

ADMIT the allegations in this paragraph regarding the location of District 22. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

60. District 22 has been represented by Republican state representative Janel Brandtjen, a white woman, since 2015. Rep. Brandtjen ran unopposed in the 2020 and 2016 general elections. In the 2018 general election, Rep. Brandtjen defeated her Democratic opponent, Aaron Matteson, by a margin of 64.3% to 35.7%. Mr. Matteson carried the Milwaukee County portion of the district, however, by a margin of 70.9% to 29.1%. In the 2014 general election, Rep. Brandtjen defeated her Democratic opponent, Jessie Read, by a margin of 70.1% to 29.9%. Ms. Read carried the Milwaukee County portion of the district, however, by a margin of 65.6% to 35.4%. Prior Republican state representative Don Pridemore, a white man, was unopposed in the 2012 general election.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

61. District 24 has a WVAP of 77.5% and a BVAP of 12.3%. It stretches from Washington County, where it includes the Town

and Village of Germantown, into Waukesha County, where it includes part of the Village of Menomonee Falls, into Ozaukee County, where it includes portions of the City of Mequon, into Milwaukee County, where it includes the Village of Brown Deer, the Village of River Hills, and part of the City of Glendale. The Village of Brown Deer has a significantly larger BVAP than the rest of District 24, at 38.2%. The Village of Brown Deer borders BVAP majority Districts 11 and 12.

ADMIT the allegations in this paragraph regarding the location of District 24. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

62. District 24 has been represented by Republican state representative Daniel Knodl, a white man, since 2009. In the 2020 general election, Rep. Knodl defeated his Democratic opponent Emily Siegrist, a Latina woman, by a margin of 51.4% to 48.5%. But Siegrist carried the Village of Brown Deer, in Milwaukee County, by a margin of 71.1% to 28.9%. In the 2018 general election, Rep. Knodl defeated his Democratic opponent Emily Siegrist by a margin of 53.6% to 46.3%. But Siegrist carried the Village of Brown Deer, in Milwaukee County, by a margin of 69.8% to 30.2%. Rep. Knodl ran unopposed in the 2014 and 2016 general elections. In the 2012 general election, Rep. Knodl defeated his Democratic opponent, Shan Haqqi, by a margin of 62.4% to 37.5%. But Haqqi carried the Village of Brown Deer, in Milwaukee County, by a margin of 58.8% to 42.2%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

63. By unpacking Districts 10, 11, 12, 16, 17, and 18's Black population and combining it with Black populations in the Village of Brown Deer, other parts of Milwaukee County, and including additional population in other areas of Milwaukee and Ozaukee Counties, the Wisconsin Legislature could have drawn seven BVAP majority districts, as required by Section 2 of the Voting

Rights Act. A demonstrative plan showing seven BVAP majority districts is attached as Exhibit 7.

LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

### **Racially Polarized Voting**

64. Black voters in the Milwaukee area are politically cohesive and overwhelmingly support Democratic candidates

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

65. The white majority, particularly in Waukesha, Ozaukee, and Washington Counties, and parts of Milwaukee County, overwhelmingly supports Republican candidates, and votes as a bloc usually to defeat Black voters' candidates of choice.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

66. For example, as the election returns for Districts 22 and 24 reported above show, the Republican incumbents carried the heavily white portions of their districts outside Milwaukee County by large margins, while losing by large margins the portions of the City of Milwaukee and the Village of Brown Deer contained in those districts, which have large Black populations.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

67. Election results in homogenous precincts illustrate the racially polarized voting. Across the 37 Milwaukee City wards where BVAP exceeds 90%, Tony Evers (D) received 96.4% and Scott Walker (R) received 2.3% in the 2018 gubernatorial election. By contrast, Washington County has a WVAP of 92.4% and Scott Walker (R) received 72.2% and Tony Evers (D) received 26.5%. Waukesha County has a WVAP of 88.1%, and Scott Walker (R) received 66.1% and Tony Evers (D) received 32.5%. Ozaukee County has a WVAP of 90.8%, and Scott Walker (R) received 62.7% and Tony Evers (D) received 35.9%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

68. Democratic primary elections in Milwaukee County, as well as nonpartisan county- and city-wide elections, demonstrate racially polarized voting as well. As a result, white voters vote sufficiently as a bloc to usually defeat Black voters' candidates of choice (absent the drawing of Section 2 compliant districts).

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

69. For example, the 2018 Democratic primary for Governor featured one Black candidate, Mahlon Mitchell. Across the 37 Milwaukee City wards where BVAP exceeds 90%, Mitchell received 77.5% of the vote, while Tony Evers received 11.8% of the vote in those same wards. By contrast, in the Village of Whitefish Bay, which has a WVAP of 85.9%, Mitchell received 10.5% of the vote, Evers received 46.9%, and other white candidates split the remaining votes. In Shorewood, which has a WVAP of 81.7%, Mitchell received 12.8% of the vote, Evers received 41.9% of the vote, and white candidates split the remaining votes. In Fox Point, which has a WVAP of 85.3%, Mitchell received 11.5% of the vote, Evers received 42.6% of the vote, and white candidates split the remaining votes. Mitchell lost the primary election to Evers statewide, and while he received a plurality of votes in Milwaukee County (35.2%), white candidates combined to receive 64.8% of the vote.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

70. Likewise, in the 2020 election for Milwaukee City Comptroller, Aycha Sawa, a white woman, defeated Jason Fields, a Black man, by a margin of 50.4% to 49.2%. But Fields carried the 37 city wards with a BVAP of 90% or greater by a margin of 78.5% to 21.5%. Sawa, on the other hand, carried the 21 city wards with a WVAP of 80% or greater by a margin of 68.7% to 31.3%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

71. The 2016 election for Milwaukee City Comptroller also demonstrated racially polarized voting. Martin Matson, a white man, prevailed over Johnny Thomas, a Black man, by a margin of 51.3% to 47.8%. But Thomas carried the 37 city wards with a BVAP of 90% or greater by a margin of 66% to 33%, while Matson carried the 21 city wards with a WVAP of 80% or greater by a margin of 62.4% to 37.6%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

72. As another example, in the 2021 primary for State Superintendent of Education, seven candidates ran, and two white women—Jill Underly and Deborah Kerr—advanced to the general election. The primary included a Black woman, Shandowlyon Hendricks-Williams. In Milwaukee County, Underly received 31.4%, Kerr received 22.4%, and Hendricks-Williams received 20.6%. Across the 37 Milwaukee City wards with a BVAP of 90% or greater, however, Hendricks-Williams received 50.8%, Underly received 9.8%, and Kerr received 17.7%. In the 21 Milwaukee City wards with a WVAP of 80% or greater, Underly received 48.2%, Hendricks-Williams received 15.7%, Sheila Briggs (a white woman) received 14.3%, and Kerr received 12.4%. Meanwhile, in the Fox Point, which has a WVAP of 85.3%, Underly received

30.1%, Kerr received 28.8%, Sheila Briggs (a white woman) received 17.4%, and Hendricks-Williams received 13.1%. In Shorewood, which has a WVAP of 81.7%, Underly received 50.2%, Briggs received 17.4%, Hendricks-Williams received 13.9%, and Kerr received 12.2%. And in Whitefish Bay, which has a WVAP of 85.9%, Underly received 36.7%, Kerr received 21.6%, Briggs received 17.2%, and Hendricks-Williams received 17.2%.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

73. These and other election results illustrate a consistent trend of racially polarized voting, with white voters voting as a bloc to usually defeat Black voters' candidates of choice absent the imposition of Section 2 remedies.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

### **Totality of Circumstances**

74. A review of the totality of circumstances reveals that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 52 U.S.C. § 10301(b).

LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. ALLEGE that the statute referred to in the paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

75. Wisconsin has a history of discriminatory voting practices. For example, a three-judge district court for the Western District of Wisconsin ruled in 2012 that Act 43 violated Section 2 of the Voting Rights Act with respect to its treatment of Latino voters in the State Assembly map in Milwaukee County. *See Baldus v. Members of the Government Accountability Board*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012).

ALLEGE that the court decision and statutory provisions referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required.

76. Moreover, a 2021 report by the U.S. House Administration Committee's Subcommittee on Elections found that voter purge mailers were disproportionately sent to areas in Wisconsin home to large Black voting populations, and those mailers were twice as likely to be wrong for Black versus white voters.

ALLEGE that the Subcommittee Report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in this paragraph, and thus DENY.

77. As explained above, voting in Milwaukee County and the surrounding counties is racially polarized.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

78. Milwaukee has recent experience with voting practices that enhance the opportunity for discrimination against Black voters.

The vast majority of Wisconsin's Black voters reside in the City of Milwaukee—the State's largest city. In the April 2020 election, held at the height of the COVID-19 pandemic, the City of Milwaukee had just five in-person polling sites (compared to the usual 180 sites), while the City of Madison—a less-populous and predominantly white city—had 66 in-person polling sites.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

79. A study by the Brennan Center found that these poll closures depressed turnout in the City of Milwaukee by 8.6 percentage points (a one-third drop), with a disproportionate effect on Black voters, whose turnout was depressed by 10.2 percentage points. News reports show that voters in the City of Milwaukee—and particularly Black voters—waited in lines for hours to vote in the April 2020 election. See <https://www.brennancenter.org/our-work/research-reports/didconsolidating-polling-places-milwaukee-depress-turnout> (last accessed September 7, 2021).

Allege that the study and the news reports referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in this paragraph, and thus DENY.

80. A study published in 2019 found that Wisconsin's voter ID law, passed by the Legislature and signed into law by Governor Walker in 2011, and generally viewed as one of the strictest such laws in the United States, reduced turnout in Milwaukee and Dane Counties in the 2016 presidential election by up to one percentage point, deterring or preventing thousands of voters from casting their ballot. The study further found that African-American voters are more likely to have been deterred or prevented from voting by Wisconsin's strict voter ID law than white voters. See Michael G. DeCrescenzo & Kenneth R. Mayer, *Voter Identification and Nonvoting in Wisconsin – Evidence from the 2016 Election*, 18 ELECTION L.J. 342 (2019).

Allege that the article referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in this paragraph, and thus DENY.

81. Black voters in Milwaukee also bear the effects of discrimination in employment, education, and health, which hinders their ability to participate effectively in the political process.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

82. A 2020 Zippia study ranked Wisconsin the worst state in the nation for racial disparities, reporting a 48% home ownership gap, a 37% income gap, and a 16.7% education gap between Black and white residents of Wisconsin.

Allege that the study referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

83. A 2019 report by the Center on Wisconsin Strategy, a UW-Madison based think tank, found that Wisconsin had the fourth worst disparity in the nation between Black and white infant mortality, the fourth worst disparity for child poverty, the worst disparity for 8th grade math scores, the second worst disparity for out-of-school suspensions, the worst disparity for bachelor's degrees, the second worst disparity for incarceration, the worst disparity for unemployment, the worst disparity for employment, the third worst disparity for income, and the eighth worst disparity for home ownership.

Allege that the report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in this paragraph, and thus DENY.

84. For the 2018-19 school year, Wisconsin reported a 23-percentage-point gap between high school graduation rates for Black students (71%) and white students (94%)—the largest gap of any state in the nation, and second only to the District of Columbia. A 2020 study by the financial firm WalletHub ranked Wisconsin last in the nation for educational equality, citing the graduation rate gap, the standardized test score gap, the college entrance exam score gap, and the college degree gap between white and minority populations.

Allege that the study referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

85. The 2018 American Community Survey data showed that the unemployment rate among Black residents of Wisconsin was nearly three times that of white residents.

Allege that the data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

86. According to the Prison Policy Initiative, Black people account for 38% of all persons in Wisconsin jails and prisons, but

just 6% of the State's population. Wisconsin's incarceration rate of Black people is one of the highest in the nation.

Allege that the data referred to in this paragraph speak for themselves, and DENY any characterization of them contrary to their express terms. LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

87. Wisconsin has severe health disparities between Black and white residents. Ozaukee County, which is predominantly white and has the second-highest median income in the states, ranked first for overall health of its residents in a 2019 report on health disparities by the Wisconsin Collaborative for Healthcare Quality. Milwaukee County, which has the vast majority of Wisconsin's Black population and has the highest rate of poverty in the state, ranked second to last among Wisconsin counties for the overall health of its residents. One measure showed that someone living in Milwaukee County was almost twice as likely to die before age 75 than someone living in Ozaukee County.

Allege that the report referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

88. These disparities are reflected at the ballot box. The 2019 Center for Wisconsin Strategy study showed that while 74 percent of eligible white Wisconsin voters participated in the 2016 election, just 47% of Black voters did—the third largest gap in the country, behind only North and South Dakota.

Allege that the study referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms. LACK

knowledge or information sufficient to form a belief as to the truth of any other allegations in the paragraph, and thus DENY.

89. Campaigns in the Milwaukee area and statewide have also featured overt and subtle racial appeals. For example, in the 2020 campaign for Assembly District 24, the Republican Party of Wisconsin sent voters a mailer attacking Democratic candidate Emily Siegrist, a Latina woman, for attending a Black Lives Matter protest over the police shooting of Jacob Blake in Kenosha. The mailer attacks Siegrist for taking her children to the protest, and describes in detail an alleged assault committed by Blake. The mailer shows a doctored photo showing Siegrist holding up a made-up sign saying “Today I’m protesting to support abusers. Tomorrow? Who knows!!” It concluded by saying “Serial Protestor Emily Siegrist now supports men who abuse women.”

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

90. In the 2020 election for President, Donald Trump aired an ad in Wisconsin accusing Joe Biden of “taking a knee”—a reference to peaceful protests of racial injustice started by football player Colin Kaepernick—in response to protests over the police shooting of Jacob Blake in Kenosha. The ad falsely accused Joe Biden of calling to defund the police. While showing the image of blond, white girl in pink, the narrator says that Trump will protect Wisconsin’s families, not criminals

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

91. On the day Deborah Kerr, a white woman, placed second in the February 2021 primary for State Superintendent of Schools—advancing to the general election—she tweeted that she had been called an n-word while in high school because “my lips were bigger than most.” Kerr was widely seen as seeking votes from conservative Wisconsinites.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

92. Although some Black candidates have had success in winning office in the Milwaukee area, most positions (outside of BVAP majority districts) are not held by Black people, and the number of Black officeholders has been far below number proportional to the Black population in recent and past history. For example, only two of out the eight current county government officials elected county-wide are Black. David Crowley, the current County Executive (elected in 2020), is the first Black person to ever elected to that office. The City of Milwaukee has only ever had one Black mayor: Marvin Pratt became acting mayor in 2004 upon the resignation of Mayor Norquist. He did not become mayor by election, however, and when he ran for a full term he was defeated in the 2004 general election by Tom Barrett, a white man. The Milwaukee region has no Black state representatives outside of the BVAP majority districts. The city of Milwaukee currently has no Black alderpersons outside of BVAP majority districts. Milwaukee County has no Black supervisors outside of BVAP majority districts.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

93. These and other factors demonstrate that the totality of circumstances show that Black voters have less opportunity than other voters to participate in the political process and elect their candidates of choice.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### ***Malapportionment in Violation of the Equal Protection Clause***

94. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 93, above.

Defendants incorporate by reference all their other responses as though fully set forth herein.

95. A state statute that effects district populations and boundaries that discriminate against citizens in highly populous legislative districts, by definition preferring voters in less populous legislative districts, violates the U.S. Constitution. The 2020 Census rendered the state's 2011 legislative districts unconstitutional, which harms or threatens to harm Plaintiffs' constitutional rights unless future elections under the current districts are enjoined.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

96. Shifts in population and population growth have rendered the 33 Senate districts and 99 Assembly districts created by 2011 Wisconsin Act 43 and modified by *Baldus* no longer roughly equal

in population, as required by the federal constitution. The population variations between and among the districts are substantial.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

97. Organizational Plaintiffs' members and constituents who reside in the overpopulated 16th, 26th, and 27th Senate districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

98. Organizational Plaintiffs' members and constituents who reside in the overpopulated 5th, 46th, 48th, 56th, 76th, 78th, 79th, and 80th Assembly districts, among others, based on the existing district lines, are particularly underrepresented in comparison with the residents of other districts.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

99. Multiple Individual Plaintiffs reside in State Senate and Assembly districts that are overpopulated, and therefore their votes are diluted compared to Wisconsin residents in districts that are now underpopulated.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

100. If not otherwise enjoined or directed, the WEC will have no choice but to carry out its statutory responsibilities for administering the upcoming 2022 legislative elections based on the now unconstitutional Senate and Assembly districts adopted in 2011 Wisconsin Act 43.

ADMIT that per Wisconsin statutes WEC is responsible for administering any election in accordance with the applicable district maps legally in effect at the time of the election. ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

101. The boundaries and the populations they define, unless modified, violate the principle of “one person, one vote” and do not guarantee that the vote and representation in the Wisconsin legislature for every citizen is equivalent to the vote and representation of every other citizen.

ALLEGE that the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census

data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

102. Plaintiffs and their members and constituents are also harmed because, until valid redistricting occurs, they cannot know in which Senate and Assembly district individuals will reside and vote. Therefore, they cannot effectively hold their representatives accountable for their conduct and policy positions advocated in office. Plaintiffs engage in accountability and voter-education efforts that are hindered by the lack of a valid redistricting plan because:

a. Their members and constituents who desire to influence the views of members of the Wisconsin Legislature or candidates for the Senate and Assembly are not able to communicate their concerns effectively because members of the legislature or legislative candidates may not be held accountable to those citizens as voters in the next election;

b. Potential candidates for the legislature will not be able to come forward, and be supported or opposed by Plaintiffs or their members, until potential candidates know the borders of the districts in which they, as residents of the district, could seek office; and,

c. Plaintiffs' members and constituents who desire to communicate with and contribute financially to candidates for the legislature who may or will represent

them, a right guaranteed by the First Amendment, are hindered from doing so until districts are correctly reapportioned;

LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

103. Plaintiffs' members and constituents' rights are compromised because of the inability of candidates to campaign effectively and provide a meaningful election choice.

ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

**COUNT 2**

***Act 43 violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301***

104. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 103.

Defendants incorporate by reference all their other responses as though fully set forth herein.

105. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group. 52 U.S.C. § 10301(a).

ALLEGE that the statutory provision referred to in this paragraph speaks for itself, and DENY any characterization of it contrary to its express terms.

106. The current district boundaries of Assembly Districts 10, 11, 12, 16, 17, and 18 “pack” Black voters, while other Black voters, including those in Assembly Districts 22 and 24, are “cracked,” resulting in dilution of the strength of the area’s Black residents, in violation of Section 2 of the Voting Rights Act.

LACK knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and thus DENY. ALLEGE that it is unnecessary to resolve whether current district boundaries violate Section 2 of the Voting Rights Act because, independent of any such claim, the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state

legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

107. Under Section 2 of the Voting Rights Act, the Wisconsin Legislature was required to create a seventh majority BVAP district in which Black voters have the opportunity to elect their candidates of choice.

ALLEGE that it is unnecessary to resolve whether current district boundaries violate Section 2 of the Voting Rights Act because, independent of any such claim, the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and

that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

108. Black voters in the Milwaukee area are politically cohesive, and the elections in the area illustrate a pattern of racially polarized voting that allows the bloc of white voters usually to defeat Black voters' preferred candidates.

LACK knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and thus DENY.

109. The totality of circumstances show that the current State Assembly plan has the effect of denying Black voters an equal opportunity to participate in the political process and to elect their candidates of choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

LACK knowledge or information sufficient to form a belief as to the truth of any factual allegations in this paragraph, and thus DENY. ALLEGE that it is unnecessary to resolve whether current district boundaries violate Section 2 of the Voting Rights Act because, independent of any such claim, the Wisconsin and United States Constitutions require that the state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, ALLEGE that the Wisconsin Elections

Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

110. Absent relief from this Court, Defendants will continue to engage in the denial of Plaintiffs' Section 2 rights.

DENY the implication that Defendants currently engage in the denial of Plaintiffs' Section 2 rights. ALLEGE that it is unnecessary to resolve whether current district boundaries violate Section 2 of the Voting Rights Act because, independent of any such claim, the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

In all other respects, ALLEGE that this paragraph contains only legal conclusions to which no responsive pleading is required. In the alternative, to the extent a response may be required, DENY the implication that Defendants currently engage in the denial of Plaintiffs' Section 2 rights and ALLEGE that the Wisconsin Elections Commission has no legal authority to create or alter district boundaries and that the BLOC Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants.

## **RELIEF SOUGHT**

In response to the BLOC Plaintiffs' prayer for relief, the Defendants ALLEGE as follows:

- The Wisconsin and United States Constitutions require that Wisconsin's state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election.
- Without regard to whether a new legislative district plan is established by the Legislature and the Governor or by a court, such a plan needs to be in place no later than March 1, 2022, in order to enable staff of the Wisconsin Elections Commission to timely and effectively administer Wisconsin's next scheduled state legislative election.
- In light of the fact that 2020 census data was not delivered to Wisconsin officials until August 12, 2021, and in light of the current partisan divisions between the Wisconsin Legislature and the Governor, there is a meaningful possibility that the Legislature and the Governor will not be able to put a new district plan in place by March 1, 2022, without involvement of a court.
- The Wisconsin Elections Commission has no legal authority to create or alter district boundaries and Plaintiffs have not alleged any actual or imminent violation of the United States or Wisconsin Constitutions, or of the Voting Rights Act, by any of the Defendants. Defendants thus are not liable for Plaintiffs' costs, disbursements, or attorney's fees.
- Injunctive relief against Defendants is not necessary or appropriate at the present time.

## **DEFENSES**

1. Defendants reserve the right to later contest the standing, under U.S. Const. art. III, of any intervening parties should it be relevant to the Court's jurisdiction.

2. It is unnecessary to resolve whether current district boundaries violate Section 2 of the Voting Rights Act because, independent of any such claim, the Wisconsin and United States Constitutions require that state legislative districts be reapportioned on the basis of the 2020 census data prior to any future state legislative election. *See* Wis. Const., art. IV, § 3; U.S. Const. amend. XIV.

**WHEREFORE**, Defendants respectfully ask the Court to issue such orders as it deems just and proper to ensure that a new state legislative district plan for Wisconsin is in place no later than March 1, 2022.

Dated at Madison, Wisconsin this 30th day of September 2021.

Respectfully submitted,

ERIC J. WILSON  
Deputy Attorney General of Wisconsin

Electronically signed by:

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